

UNITED STATES COURT OF APPEALS

OCT 22 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

DARRYL MONTGOMERY,

Petitioner - Appellant,

v.

CARL WHITE; JAMES L. SAFFLE,

Respondents - Appellees.

No. 97-6187

(D.C. No. 97-CV-224)

(W. D. Okla.)

ORDER AND JUDGMENT*

Before BALDOCK, McKAY, and LUCERO, Circuit Judges.

After examining Petitioner's brief and the appellate record, this panel has determined unanimously to grant Petitioner's request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

In this section 2254 action Petitioner claims ineffective assistance of counsel and the "denial of right to appeal" his state conviction pursuant to guilty plea. We affirm for the reasons given in the magistrate judge's recommendation. To the extent that

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner's claims turn on the factual issues of whether he knowingly waived his right to appeal and whether he instructed his counsel to appeal, we conclude that the trial court's express resolution of these issues is not clearly erroneous. To the extent that any issue is subject to *de novo* review, we agree with the trial court's resolution.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge